

East Contra Costa County Habitat Conservation Plan Association

HCPA Coordination Group Meeting

Thursday, August 21, 2003

1 p.m. to 3 p.m.

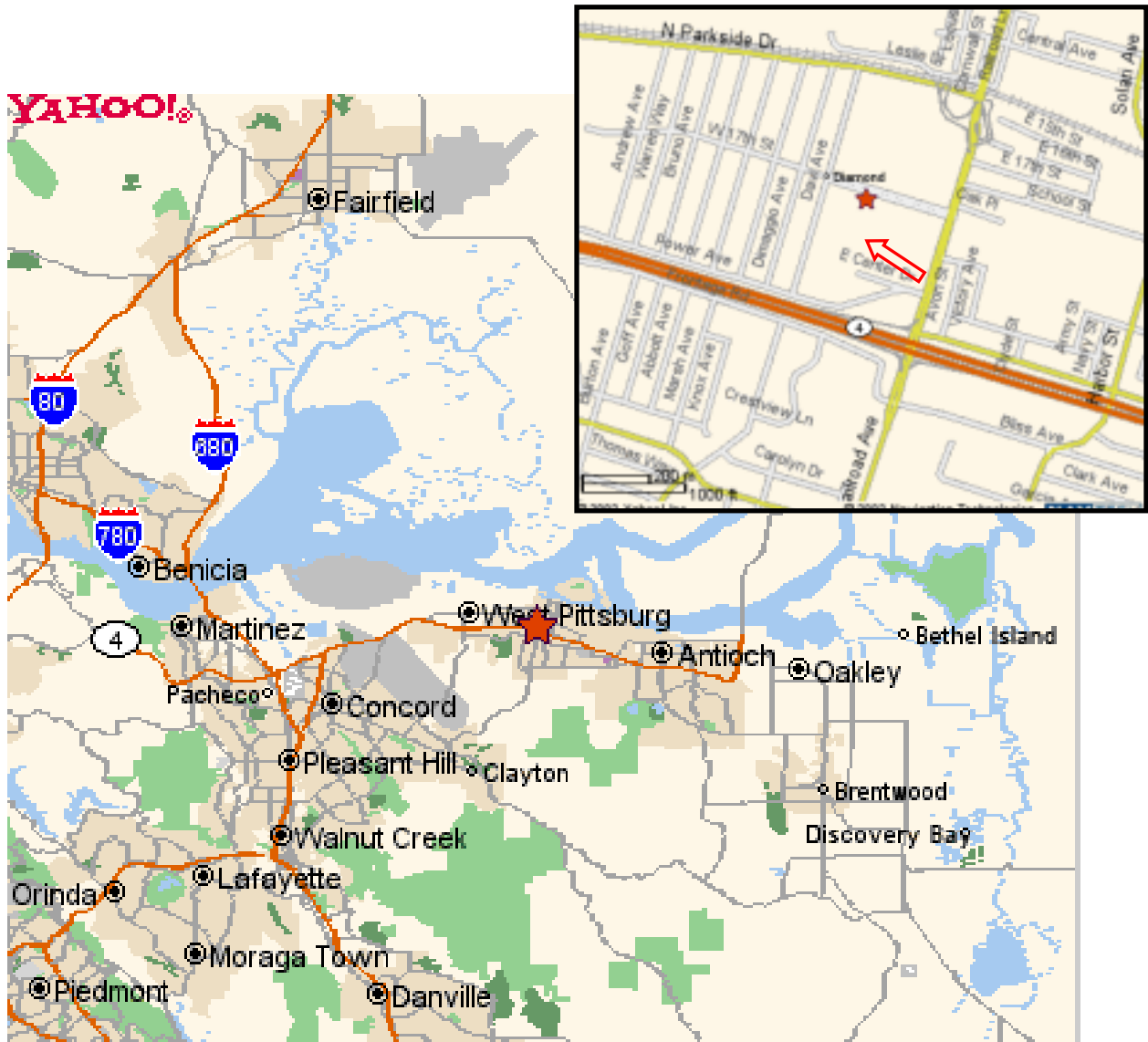
City of Pittsburg Council Chambers
65 Civic Drive in Pittsburg, 3rd Floor
(see map on reverse)

Agenda

- 1:00 Introductions. Review contents of meeting packet.
- 1:05 Review and approve Draft Meeting Record of the July 17, 2003 Coordination Group meeting.
- 1:10 Updates:
 - Draft of NCCP Planning Agreement available online; comments due Sept. 2, 2003
 - Wetlands permitting
 - Discussion topics for the next several meetings
 - September: O&M & admin cost estimates, funding implementation
 - October: adaptive management, assurances, revised impacts estimates
 - November: preliminary, partial draft of HCP/NCCP
- 1:30 Report from FWS/CDFG on policy/regulations and Principles of Participation
- 1:45 Permit Area principles and approach (see draft memo, attached)
- 2:00 General approaches to structuring implementation of the HCP/NCCP (see attached figures)
- 2:20 General approaches to funding the HCP/NCCP (see memo attached)
- 2:50 Confirm upcoming meeting dates. Upcoming Coordination Group meetings are scheduled as follows for the City of Pittsburg Council Chambers (usually 3rd Thursdays):
 - Thursday, September 18, 1 p.m. to 3 p.m.
 - Thursday, October 16, 1 p.m. to 3 p.m.
- 2:55 Public comment.
- 3:00 Adjourn.

Times are approximate. If you have questions about this agenda or desire additional meeting materials, you may contact John Kopchik of the Contra Costa County Community Development Department at 925-335-1227.

Map and Directions to Pittsburg City Hall 65 Civic Drive



Directions from I-680, Central County

- 1) Take Hwy 4 East toward Antioch/Stockton
- 2) Follow Hwy East over the hill (Willow Pass)
- 3) Exit Railroad Ave. (the 2nd exit after the hill)
- 4) At the end of the exit ramp, turn left on Railroad Ave.
- 5) Turn left at the second intersection, East Center Drive (signs for various city offices will also point you this way)
- 6) Immediately bear right into the large parking lot next to City Hall
- 7) Meeting is on the 3rd floor

Directions from Antioch and points east

- 1) Take Hwy 4 West toward Martinez/Richmond
- 2) Exit Railroad Ave.
- 3) At the end of the exit ramp, turn right on Railroad Ave.
- 4) Turn left at the next intersection, East Center Drive (signs for various city offices will also point you this way)
- 5) Immediately bear right into the large parking lot next to City Hall
- 6) Meeting is on the 3rd floor

DRAFT MEETING RECORD

East Contra Costa County Habitat Conservation Plan Association (HCPA) Coordination Group Meeting

Thursday, July 17, 2003
1 p.m. to 3 p.m.

City of Pittsburg Council Chambers

1:00 Welcome and Introductions. Meeting attendees introduced themselves. Coordination Group members in attendance were:

Chris Barton, City of Pittsburg
Bradley Brownlow, Morrison & Foerster
Paul Campos, HBANC
Mike Daley, Sierra Club, Bay Chapter
Abigail Fateman, CCC Community Dev.
Janice Gan, CA Dept. of Fish and Game
Fran Garland, CCWD
Jim Gwerder, CCC Citizens Land Alliance
Barry Hand, City of Oakley
John Kopchik, CCC Community Dev.

Sheila Larsen, U.S. Fish and Wildlife
Suzanne Marr, U.S. EPA
Teifion Rice-Evans, EPS, Inc.
John Slaymaker, Greenbelt Alliance
Beth Stone, EBRPD
Laura Valoppi, U.S. Fish and Wildlife
Donna Vingo, CCC Citizens Land Alliance
Mike Vukelich, CCC Farm Bureau
Carl Wilcox, CA Dept. of Fish and Game
David Zippin, Jones & Stokes, Inc.

Also in attendance: John Hopkins, Institute for Ecological Health, Margie Kauble, Contra Costa Citizens' Land Alliance, and Cheryl Morgan

1:05 Review and approve Draft Meeting Record of the June 19, 2003 Coordination Group meeting. The Draft Meeting Record was accepted with the following requested change to the first bullet of the 2:15 item: "Several members representing conservation organizations suggested using impact scenario 12 (lands designated for development within the existing ULL) even though they might object to individual projects within the ULL-that impact scenario."

1:10 Updates:

- **Coordination Group Agriculture Subcommittee (see memo attached)**

John Kopchik reviewed the memo summarizing the Ag. Subcommittee meeting. During the ensuing discussion, members of the Subcommittee realized that the memo omitted mention that John was going to do more research on the existing County permitting process for ag. facilities/activities and report back. John agreed that he had agreed to do this. The coordination group reviewed the subcommittee's specific recommendations and concurred. The recommendations accepted by the Coordination Group were the following:

- The HCP should have a neighboring landowner protection component (in other words, an assurance package for owners of land adjacent to new preserves that their existing activities won't be effected by any increased production of endangered species in the preserve)
- The details of the how this component will work--including the question of whether the program will automatically cover all landowners except those who ask not to be covered ("opt-out") or whether the program will only

cover those landowners who ask to be covered (“opt-in”)--still need to be resolved.

- The question of how to establish the pre-HCP baseline of endangered species on the neighboring lands needs more work. However, the group agreed that it was not fair or practical to require the neighbor to pay for the cost of any surveys.
- The question of how long these protections will last also needs to be explored more. Existing law may limit term of permit.

- **EIR/EIS Scoping Meeting July 17 at 3:30 and 7 (following Coordination Group meeting)** John Kopchik explained the timing and purpose of the scoping meetings.
- **Draft of NCCP Planning Agreement coming soon** John Kopchik provided a brief update on this topic.
- **Permit area principles** Not discussed in the interest of time.
- **Discuss draft Framework document** Not discussed in the interest of time.

1:45 Presentation and discussion of preliminary work to estimate costs of implementing HCP (Teifion Rice-Evans, Economic and Planning Systems, David Zippin, Jones and Stokes, and John Kopchik). Teifion Rice-Evans, David Zippin, and John Kopchik reviewed the preliminary cost estimates and cost estimation process.

- **Process and preliminary estimates on land acquisition costs under preliminary conservation strategy**

Comments made by individual members included the following:

- Does the estimation model consider the price being paid for habitat mitigation sites? Teifion stated the model is based on comparable sales and that the model assume that developability is the main driver of land prices. Some discussion ensued on whether, with the implementation of the HCP, habitat conservation might supplant limited development as the “highest and best use” for certain types of land and could, therefore, drive land prices in the marketplace.
- Consideration of land scarcity as an inflationary factor was also discussed. Teifion will consider these topics further as the estimation process is finalized.

- **Process for estimating restoration, management, administration and other costs for implementing the HCP**

David Zippin explained that the approach to this portion of the cost estimation was to itemize all the cost categories, estimate costs as if each function had to be created from scratch, and then consider possible cost savings through coordination with existing institutions. Comments made by individual members included the following:

- Why would dedicated police services be needed?
- Would a new agency/entity really be needed or could an existing entity take the job over?
- Creating a new entity might be a valued assurance to some members.
- Some of the due diligence costs might be better estimated as seller costs.

2:50 Confirm upcoming meeting dates. Upcoming Coordination Group meetings are scheduled as follows for the City of Pittsburgh Council Chambers (usually 3rd Thursdays):

Thursday, August 21, 1 p.m. to 3 p.m. (tentative)

2:55 Public comment. None

3:00 Adjourn.

EAST CONTRA COSTA COUNTY HABITAT CONSERVATION PLAN ASSOCIATION (HCPA)

DATE: August 21, 2003
TO: HCPA Coordination Group (CG)
FROM: John Kopchik
SUBJECT: Preliminary Proposed Approach for Phasing Permit Coverage for Urban Development

The HCP/NCCP must identify an area to be covered by the permits issued under the plan. Urban development is likely to be the dominant type of impact covered by the plan, and defining an area to be permitted for urban growth is a difficult task because of the uncertainty¹ and controversy involved in forecasting potential growth over a 30 year time frame. The Coordination Group has discussed this topic at several meetings over the last few months and--though there has been much more agreement on this topic than might be expected--the group has not developed a consensus recommendation either. Individual Coordination Group participants have raised a series of concerns or suggestions on this topic, including the following:

- Suggestion that the permit area be realistic for the life of the plan;
- Concern that the permit area and HCP/NCCP not facilitate undesirable and as-yet-unplanned growth;
- Concern that the permit area allow local jurisdiction to meet their housing and other development objectives/requirements over the term of the plan;
- Concern that development permitted under the HCP/NCCP be fully consistent with the conservation objectives and requirements of the HCP/NCCP.

Staff has also offered the perspective that the HCP/NCCP is not be an appropriate venue for attempting to plan for and seek agreement on the precise location and extent of urban growth in Eastern Contra Costa County over the next 30 years. Resolving the questions of if and where growth should occur must consider conservation objectives, but must also consider other factors such as traffic, economic vitality, quality of life, and jobs. The environmental review for the

¹ For example, as discussed more thoroughly in the April 17, 2003 memo on this subject, the location of future growth may be uncertain because:

- a) The term of the HCP/NCCP is longer than that for General Plans; and
- b) General Plans of participating land use planning agencies may not be consistent and annexations can therefore lead to policy change; and
- c) General Plans are sometimes amended long before they expire; and
- d) Designation of undeveloped lands for a more intensive land use does not necessarily mean that the property owner will choose to develop or that he or she will receive required permits for building on the property during the life of the HCP/NCCP; and
- e) There is a great deal of disagreement among different agencies and constituencies on the questions of if and where future growth should occur.

HCP/NCCP will consider these other topics, but the HCP/NCCP planning effort is not the appropriate vehicle for resolving them.

Given the above comments and observations, HCPA Member Agency staff has proposed a phased approach to setting the permit area for urban development. Staff discussed such an approach conceptually with the HCPA Executive Governing Committee and were encouraged to explore this idea further. Provided below is a preliminary proposal.

I. Proposed Principles for Setting a Permit Area for Urban Development:

The HCP/NCCP permit area for urban development should:

- provide adequate opportunity for land use planning agencies in East Contra Costa County to meet their goals and objectives for providing housing, employment, and public infrastructure;
- not interfere with the conservation objectives of the plan; and
- follow approved local land use regulations now and in the future

II. Proposal for Setting a Permit Area for Urban Development in Phases:

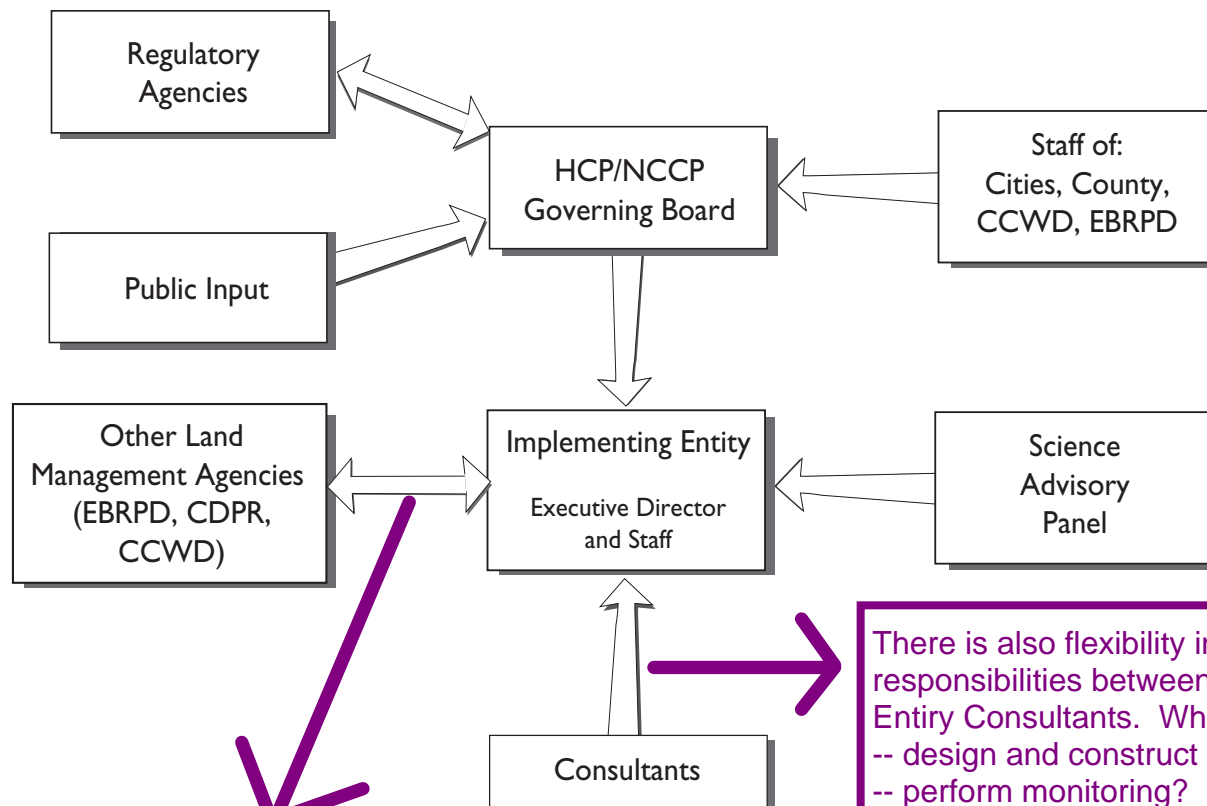
The permit area for urban development under the HCP/NCCP shall be adjusted by the implementing entity as follows, subject to the conditions imposed by the Implementation Agreement for the HCP/NCCP:

- a) The permit area authorized by the implementing entity shall be the area within the HCP inventory area, and within the Urban Limit Line (ULL) or the city limits of participating cities, whichever is larger.
- b) Should the ULL or city limits expand or contract during the term of the plan, the implementing entity would expand or contract the permit area accordingly.
- c) The HCP/NCCP and/or the Implementation Agreement for the HCP/NCCP shall define an area that will not be covered by the permit area for urban development, now or in the future, regardless of the location of the ULL or city limits. The area excluded from future permit coverage under the HCP/NCCP shall reflect the priorities of the Conservation Strategy for the HCP/NCCP.

III. Scaling Elements of the Conservation Strategy to Keep Pace with Development

To reflect the phased approach to the permit area for urban development and the uncertainty over how much development and how much habitat impact will occur over the life of the plan--and therefore how much money will be raised from development fees—staff propose introducing an element of scalability to the Conservation Strategy. For example, the Conservation Strategy would include a baseline of required conservation actions, including acreage requirements for habitat protection, but some of the conservation requirements could increase as the level of impact increases. Such scaling would need to have a strong geographic component so conservation actions establish a base of preserves and build on these over time. Potential advantages of this approach include: 1) more assurance that funding levels will match

conservation requirements; and 2) more assurance that if growth stops unexpectedly, the preserve system will have integrity. Challenges associated with this approach include the distinctive requirements of the state and federal laws with which the HCP/NCCP must comply and the associated tension between mitigation-based requirements and requirements for general conservation of species and ecological processes.

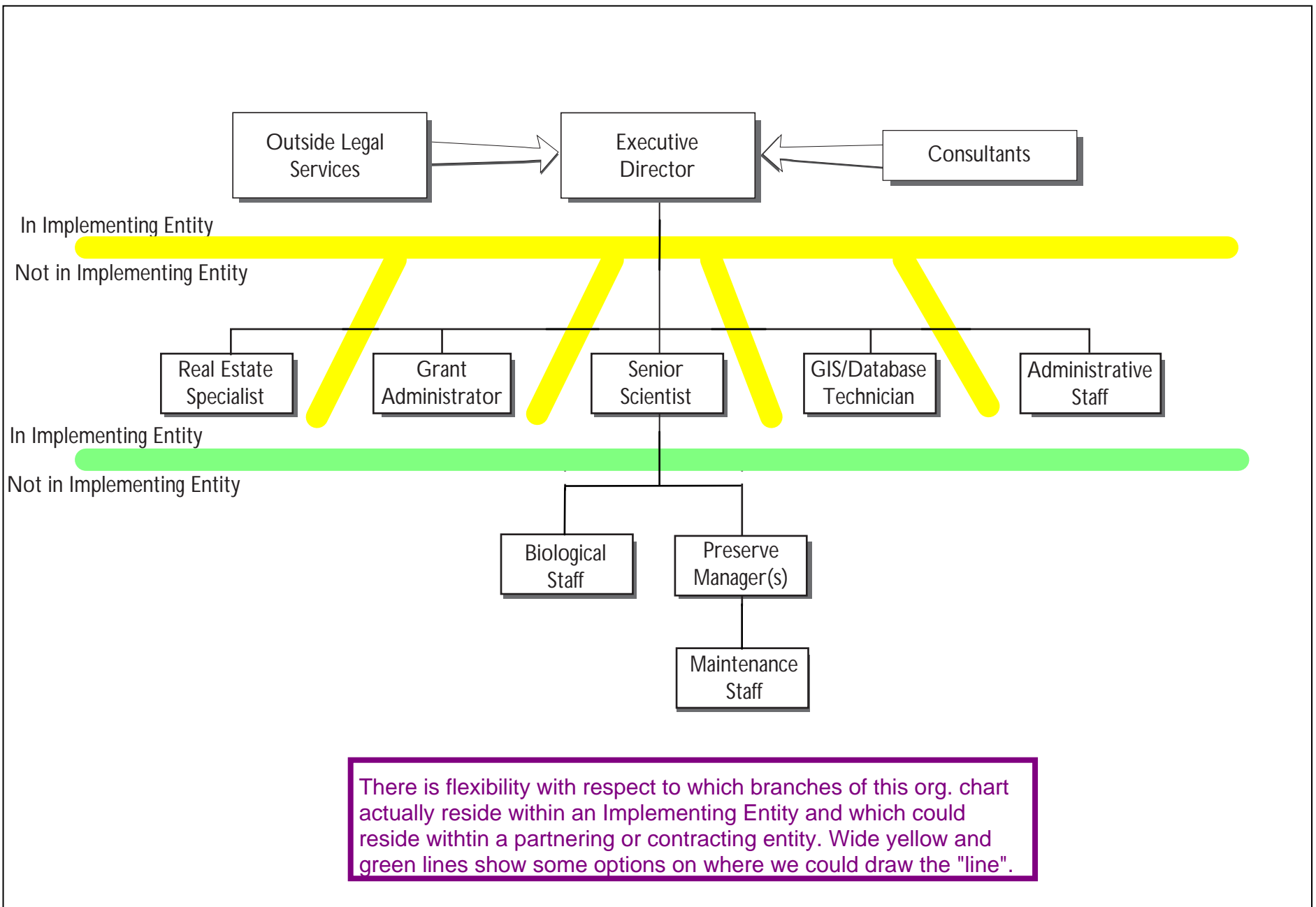


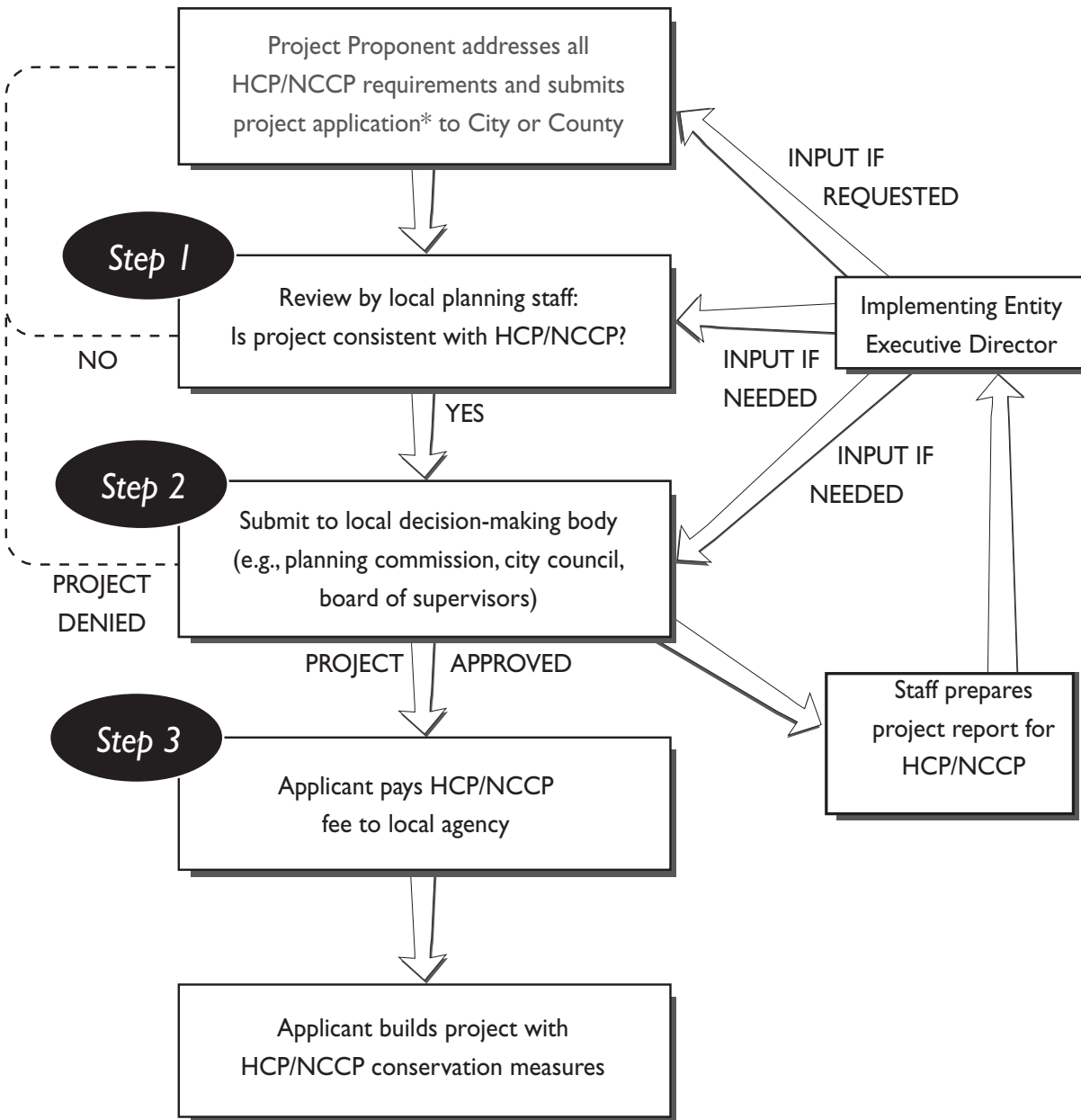
There is flexibility in how we design who does what. E.g., should the Implementing Entity or Other Land Management Agencies:

- perform real estate transactions?
- hold title to purchased land?
- perform day-to-day land management?
- conduct habitat restoration? -- perform monitoring?
- ensure compliance with HCP/NCCP requirements? (probably IE)

There is also flexibility in dividing responsibilities between the Implementing Entity Consultants. Which should:

- design and construct restoration projects?
- perform monitoring?
- conduct environmental review?
- provide legal services?





* For example, required surveys, biological report, design elements from HCP/NCCP incorporated into project, avoidance measures planned.

00495.00

MEMORANDUM

To: East Contra Costa County Habitat Conservation Plan Association

From: Teifion Rice-Evans and Jason Tundermann

Subject: Developer Mitigation Fee Funding Options and Implications; EPS #11028

Date: August 15, 2003

The development of an HCP requires planning-level estimates of the cost of HCP implementation, and prior memoranda have provided initial estimates of land acquisition costs, while restoration, management and monitoring cost estimates are under way. The purpose of the cost estimation is to provide an estimate of the level of funding required. The regulations governing the adoption of both NCCPs and HCPs require a clear demonstration of how implementation costs will be funded. While a portion of the cost may be covered by grant funding or the investment of conservation organizations in particular acquisitions, reliance on such uncertain sources of funding is not sufficient for NCCP/ HCP adoption. Rather, specific local funding sources must be identified that will be adopted, implemented, and updated as necessary to cover the costs of the HCP.

DEVELOPER MITIGATION FEES

Developer mitigation fees often account for a significant portion of HCP/ NCCP funding. Developers, as recipients of incidental take permits, are viewed as beneficiaries of HCPs/ NCCPs, and are generally expected to contribute to funding through fees assessed on a per acre basis. In determining the appropriate developer mitigation fees, a number of issues could be considered:

- *A.) Fair Share Apportionment.* Different plans have taken different approaches to the allocation of implementation costs to new development. Several smaller HCPs, for example, have placed the large majority of the cost burden on new development. Larger HCPs and joint NCCPs/ HCPs tend to attribute a share of the costs to existing development, funded through sources other than developer mitigation fees. For example, the San Joaquin County Multi Species Habitat Conservation Plan attributes about 60 percent of the HCP implementation costs associated with certain habitat types to new development through mitigation fees, with the remaining 40 percent attributed to existing development. This breakdown was based on an estimate of the proportion of habitat take associated with past development and expected habitat take associated with future development. Such an approach must also take account of existing levels of conservation that serve to balance existing development.



- *B.) Developer Participation* – Developers often retain the choice of obtaining incidental take permits through direct communication with the USFWS and CDFG. While the appeal of an NCCP/ HCP is that it can provide a clear, predictable method for obtaining permits, if the fee is set too high many developers may opt out. This can undermine the implementation of the conservation plan.
- *C.) Financial Feasibility* – If the fees levied place too high a burden on development, the rate of development could be significantly affected resulting in a range of unintended consequences. While every development is different, there are specific standards that indicate when mitigation cost burdens, when added to other imposed cost burdens, may render a number of projects infeasible.
- *D.) Maximum Extent Practicable (MEP) Standard* – If the fees levied are very low and outside funding is not used to make up the difference, the HCP may be challenged under the maximum extent practicable standard as was the case with the North Natomas HCP in Sacramento County. The precise meaning of this standard is somewhat unclear, though developer fees that do not generate significant mitigation funding may be deemed too low to permit mitigation to the maximum extent practicable.
- *E.) Mitigation vs. Contribution to Recovery* – It may be possible to categorize the conservation actions in the plan by whether the action simply mitigates impacts covered by the plan or whether it goes beyond what would be required under a project-by-project approach to permitting and contributes to species recovery. Such a categorization could inform cost allocations. However, categorizing conservation actions by such criteria would be very difficult because there are no recovery plans for most of the covered species and the plan currently does not draw a line between mitigation and contribution to recovery except in special cases (e.g., wetlands and riparian woodlands).
- *F.) Availability of Other Funding Sources* – Defining the amount of other, non-developer funding that is available for implementing the goals and objectives of the HCP could inform a decision on how much funding must be raised from development.

In addition to setting the appropriate fee at the time of adoption, the NCCP/ HCP must also include mechanisms for adjusting the fee in the case that HCP costs increase over time. Inflationary cost increases are generally associated with all cost categories, though land costs, depending on fluctuations in the real estate market, can often increase significantly over a relatively short duration. Periodic fee updates must be included in the plan to ensure that the fee funding generated continues to cover its share of the costs. A failure to adjust the fee can result in a limited ability to conserve land as well as legal challenges to the plan.

For the purposes of illustration, a simple fee calculator model has been developed as shown in **Tables 1** and **2**. The numbers are all hypothetical and will be replaced once the cost estimates and covered areas have been determined. The fee calculator in **Table 1** addresses an example scenario with a total HCP implementation cost of \$250 million and permitted development of 10,000 gross acres. The fee calculator in **Table 2** addresses a scenario with a total HCP implementation cost of \$300 million and permitted development of 15,000 gross acres. It is assumed that if more development occurs HCP costs will increase, but by a lower proportion than the additional development.



The four alternatives presented differ by the proportion of the cost that is fee funded. In **Table 1**, each alternative considers a 25 percent increment in the proportion of costs fee-funded with Alternative 1, the lowest with 25 percent fee-funded, and Alternative 4, the highest, with 100 percent fee-funded. Under this hypothetical example, the fee calculator shows that the cost burden on development will range from a low of about \$6,250 to a high of \$25,000 per gross acre. Expressed differently, for a typical residential development, with an average development density of 5.5 units per gross acre, the fee will range from the equivalent of \$1,100 per unit to \$4,500 per unit. At the same time, the funding required from non-fee sources decreases from about \$187.5 million to zero as the fee increases in this range.

Under the higher development scenario, the proportions funded by new development are assumed to be higher, with proportions of 40 percent, 65 percent, 90 percent, and 100 percent under the four alternatives. The proportions are increased due to the now greater impact of new development relative to past development. Under this hypothetical example, the fee calculator shows that the cost burden on development will range from a low of about \$8,000 to a high of \$20,000 per gross acre. Expressed differently, for a typical residential development, with an average development density of 5.5 units per gross acre, the fee will range from the equivalent of \$1,500 per unit to \$3,600 per unit. At the same time, the funding required from non-fee sources decreases from about \$180 million to zero as the fee increases in this range.

OTHER FUNDING

Given the scale of this NCCP/ HCP and for the reasons outlined above, funding from other sources will be required. Identifying such funding sources is one of the most challenging components of HCP implementation. A broad list of possible outside funding sources was provided in our January 16, 2003 memo. The most likely sources of local funding will be reviewed in more detail in a subsequent memorandum.



Table 1
Hypothetical Mitigation Fee Calculations - Example 1
East Contra Costa County NCCP/ HCP

HYPOTHETICAL

Items	Alt. 1	Alt. 2	Alt. 3	Alt. 4
Total Cost	\$250,000,000	\$250,000,000	\$250,000,000	\$250,000,000
% Other Funding	75%	50%	25%	0%
% Fee Funding	25%	50%	75%	100%
Other Funding	\$187,500,000	\$125,000,000	\$62,500,000	\$0
Fee Funding	\$62,500,000	\$125,000,000	\$187,500,000	\$250,000,000
Gross Acres Developed	10,000	10,000	10,000	10,000
Fee per Gross Acre	\$6,250	\$12,500	\$18,750	\$25,000
Fee per Residential Unit (1)	\$1,136	\$2,273	\$3,409	\$4,545

Table 2
Hypothetical Mitigation Fee Calculations - Example 2
East Contra Costa County NCCP/ HCP

HYPOTHETICAL

Items	Alt. 1	Alt. 2	Alt. 3	Alt. 4
Total Cost	\$300,000,000	\$300,000,000	\$300,000,000	\$300,000,000
% Other Funding	60%	35%	10%	0%
% Fee Funding	40%	65%	90%	100%
Other Funding	\$180,000,000	\$105,000,000	\$30,000,000	\$0
Fee Funding	\$120,000,000	\$195,000,000	\$270,000,000	\$300,000,000
Gross Acres Developed	15,000	15,000	15,000	15,000
Fee per Gross Acre	\$8,000	\$13,000	\$18,000	\$20,000
Fee per Residential Unit (1)	\$1,455	\$2,364	\$3,273	\$3,636

(1) Assumes average density of 5.5 units per gross acre for residential subdivisions.